

JEREMIAH WILLIAMS)	
)	
Claimant-Respondent)	DATE ISSUED:
)	
v.)	
)	
CERES TERMINALS,)	
INCORPORATED)	
)	
Self-Insured)	
Employer-Petitioner)	DECISION and ORDER

Appeal of the Compensation Order-Award of Attorney’s Fees of Thomas C. Hunter, District Director, United States Department of Labor.

H. Thomas Lenz (Spector & Lenz, P.C.), Chicago, Illinois, for claimant.

Gregory P. Sujack (Garofalo, Schreiber & Hart, Chartered), Chicago, Illinois, for self-insured employer.

Before: SMITH and BROWN, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals the Compensation Order-Award of Attorney’s Fees (Case No. 10-34685) of District Director Thomas C. Hunter rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney’s fee award is discretionary and may only be set aside if shown by the challenging party to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant fractured his left ankle in a work-related accident on May 14, 1995, and filed his claim for compensation on May 20, 1995. Employer asserts that it timely paid claimant for various periods of disability, filed a timely notice of controversion, and on May 7, 1997, issued its notice of final payment of benefits for a 10 percent loss of use of the foot, in

accordance with the final recommendation of the claims examiner.¹

On April 22, 1999, claimant's counsel submitted a fee petition to the district director requesting an attorney's fee of \$4,517.50, plus \$459 in expenses, representing work performed before the district director. On May 11, 1999, employer sent a letter to the district director requesting that a decision not be issued until it could locate claimant's file, which it stated had been archived.² Employer requested that it be allowed to submit to the district director any objections to the proposed fee that it might have, including whether counsel is entitled to a fee payable by employer for the work performed. Without responding to employer's letter, the district director issued a Compensation Order on June 28, 1999, awarding claimant's counsel the entire fee requested.

On appeal, employer challenges the fee award of the district director. Claimant responds, urging affirmance of the district director's fee award.³

Employer contends that the district director's failure to allow it a reasonable time to respond to claimant's fee petition deprived it of due process. We agree. Due process requires that a fee request be served on employer and that employer be given a reasonable time to respond. *See Todd Shipyards Corp. v. Director, OWCP*, 545 F.2d 1176, 5 BRBS 23 (9th Cir. 1976); *Codd v. Stevedoring Services of America*, 32 BRBS 143 (1998); *Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990); 20 C.F.R. §702.132. In the instant case, it is undisputed that claimant's counsel's fee petition was filed on April 14, 1999, that a request for an extension of time in which to file objections was sought by employer on May 11, 1999, and that a fee was awarded by the district director on June 28, 1999, without action on employer's motion. As employer in this case was not afforded a reasonable opportunity to respond to the fee request, we vacate the district director's attorney's fee award, and remand

¹Employer states that on November 27, 1995, claimant was released by his treating physician to return to full duty work.

²Employer's counsel explained that claimant's file had been archived, necessitating time for its retrieval, because in the approximately two years since the last activity on claimant's claim, employer ended its relationship with its adjusting service and brought its cases "in house."

³Claimant also requests that the claim be remanded to the district director for reconsideration of the extent of his permanent partial disability, as he alleges that the Department of Labor's independent medical examiner, upon whose opinion the claims examiner made his recommendation, previously testified on behalf of insurance carriers and self-insured employers. We agree with employer's reply that such a Motion for Remand is not properly before this Board, and we decline to address it.

the case for the district director to reconsider the fee after allowing employer a reasonable time to file a response to counsel's fee petition.⁴

Accordingly, the district director's Compensation Order - Award of Attorney's Fees is vacated, and the case is remanded for proceedings consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

⁴Accordingly, we decline to address employer's substantive objections to the fee awarded by the district director.